

THE HONORABLE BENJAMIN H. SETTLE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

GEOFF MCPHERSON and ROSEANN
MCPHERSON,

Plaintiffs,

v.

HOMEWARD RESIDENTIAL,
FIDELITY NATIONAL TITLE
INSURANCE COMPANY, SAND
CANYON CORPORATION f/k/a
OPTION ONE MORTGAGE
CORPORATION, U.S. BANK
NATIONAL ASSOCIATION, AS
TRUSTEE FOR J.P. MORGAN
MORTGAGE ACQUISITION CORP.
2005-OPT2 ASSET BACKED PASS-
THROUGH CERTIFICATES, SERIES
2005-OPT2, and AMERICAN HOME
MORTGAGE SERVICING, INC.,

Defendants.

No. 3:12-cv-05920 BHS

STIPULATION AND
ORDER TO TEMPORARILY ENJOIN
TRUSTEE'S SALE

Noted for Consideration:
December 10, 2012

I. STIPULATION

Plaintiffs and Defendants, by and through their undersigned counsel, hereby stipulate to the entry of the following order temporarily enjoining the foreclosure sale of Plaintiffs' residence currently set for December 14, 2012, pursuant to the Washington Deed of Trust Act, RCW 61.24 *et seq.*

STIPULATED ORDER ENJOINING FORECLOSURE
(No. 3:12-cv-05920 BHS) – 1

71045-0132/LEGAL25351725.1

Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
Phone: 206.359.8000
Fax: 206.359.9000

1 WHEREAS Plaintiffs are borrowers on a certain residential mortgage loan, secured by a
2 deed of trust, that is the subject of this action. Defendant Homeward Residential, Inc., f/k/a
3 American Home Mortgage Servicing, Inc. ("Homeward") is the loan servicer of Plaintiffs' loan;
4 U.S. Bank National Association, as Trustee for J.P. Morgan Mortgage Acquisition Corp. 2005-
5 OPT2 Asset Backed Pass-Through Certificates, Series 2005-OPT2 is the beneficiary; and
6 Fidelity National Title Insurance Company is the successor trustee under the subject deed of
7 trust.
8

9 WHEREAS a foreclosure sale of Plaintiffs' residence is currently set for December 14,
10 2012.
11

12 WHEREAS Plaintiffs have applied for a loan modification. Homeward has advised
13 Plaintiffs' that the loan modification application is missing required information and documents.
14 In order to allow additional time to determine whether Plaintiffs are qualified for a loan
15 modification, Plaintiffs and Defendants agree to the entry of this Order postponing the
16 foreclosure sale as follows:
17

18 1. Provided that Plaintiffs comply with the payment terms set forth in Paragraph 2
19 below, the foreclosure sale shall be postponed until the earlier of (a) March 9, 2013 or (b) such
20 time that Homeward determines that Plaintiffs do not qualify for a loan modification (if
21 applicable). If the foreclosure sale is set for a date before March 9, 2013, Homeward shall
22 provide Plaintiffs with at least fourteen (14) days advance notice of the sale date to allow
23 Plaintiffs an opportunity to cure the default or move the Court for an order restraining the sale.
24

25 2. Pursuant to RCW 61.24.130(1), as a condition of entry of this Stipulated Order
26 and its continued effect, within three (3) business days of entry of this Order, Plaintiffs shall
27 deposit in the Court's Registry the sum of one thousand two hundred and seventy-seven
28 thousand dollars (\$1,277.00), which is the monthly payment amount that would be due on the
29 obligation secured by the deed of trust if the deed of trust was not being foreclosed. Further,
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31 STIPULATED ORDER ENJOINING FORECLOSURE
32 (No. 3:12-cv-05920 BHS) - 2
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1 Plaintiffs shall thereafter continue to make this payment on a monthly basis to the Court Registry
2 by the fifteenth (15th) day of each month (starting January 15, 2013) and continuing until
3 termination of this Order pursuant to paragraph one (1) above or further Order of this Court.
4
5 Contemporaneous with each deposit, Plaintiffs shall provide Defendants' counsel with proof of
6
7 the timely deposit of amounts required by this Order.
8
9

10
11 3. In the event Plaintiffs fail to make the initial payment due three (3) days after
12 entry of this Order, or fail to timely deposit in the Court Registry any of the monthly payments
13 that are due under the preceding paragraph, this Stipulated Order shall automatically dissolve, all
14 amounts included in the Court Registry shall be forfeited to Defendant Homeward to be applied
15 to Plaintiffs' loan according to the terms of the promissory note, and the foreclosure sale may be
16 scheduled in accordance with the requirements of the Washington Deed of Trust Act.
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19 4. Nothing in this Stipulated Order prevents Plaintiffs from moving to extend or
20 modify the terms of this Order, including requesting a restraint of the foreclosure sale beyond the
21 terms of Paragraph 2 above. Nor does this Stipulated Order prevent Plaintiffs or Defendants
22 from proceeding with the litigation, including discovery and dispositive motion practice.
23
24

25 Stipulated this 10th day of December, 2012.
26
27

28
29 By: s/ Jill J. Smith
30 Jill J. Smith WSBA #41162
31 National Resource Law Group PLLC
32 2217 NW Market Street, Suite 27
33 Seattle, WA 98107
34 Telephone: 206.227.9800
35 Facsimile: 206.466.5645
36 Email: jill.smith@naturalresourcelawgroup.com
37 Attorney for Plaintiffs
38

39 By: s/ Frederick B. Rivera
40 Frederick B. Rivera WSBA #23008
41 Perkins Coie LLP
42 1201 Third Avenue, Suite 4900
43 Seattle, WA 98101-3099
44 Telephone: 206.359.8000
45 Facsimile: 206.359.9000
46 Email: FRivera@perkinscoie.com
47 Attorneys for Defendants American Home
48 Mortgage Servicing, Inc., now known as
49 Homeward Residential, Inc., and U.S. Bank
50 N.A., as Trustee for J.P. Morgan Mortgage
51 Acquisition Corp. 2005-OPT2 Asset Backed
Pass-Through Certificates, Series 2005-OPT2

FIDELITY NATIONAL LAW GROUP

s/ Daniel A. Womac

Daniel A. Womac (WSBA #36394)

Fidelity National Law Group

1200 6th Avenue, Suite 620

Seattle, WA 98101

Telephone: 206.224.6004

Facsimile: 877.655.5276

Email: daniel.womac@fnf.com

Attorneys for Defendant Fidelity National Title
Insurance Company

II. ORDER

It is so Ordered.

Dated this 11 day of December, 2012.


UNITED STATES DISTRICT JUDGE

STIPULATED ORDER ENJOINING FORECLOSURE
(No. 3:12-cv-05920 BHS) – 4

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